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**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 3151

KAREN G. IBARRA, TCH

571 Brutus Street

San Diego, CA 92114

Pharmacy Technician Reg. No. TCH 34516

Respondent.

A C C U S A T I O N

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about September 11, 2000 the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 34516 to Karen G. Ibarra (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2010, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 477 of the Code states:

2 As used in this division:

3 (a) "Board" includes "bureau," "commission," "committee," "department,"
4 "division," "examining committee," "program," and "agency."

5 (b) "License" includes certificate, registration or other means to engage in
6 a business or profession regulated by this code.

7 5. Section 118, subdivision (b), of the Code provides that the suspension/
8 expiration/surrender/cancellation of a license shall not deprive the Board of jurisdiction to
9 proceed with a disciplinary action during the period within which the license may be renewed,
10 restored, reissued or reinstated.

11 6. Section 4300 of the Code states:

12 (a) Every license issued may be suspended or revoked.

13 (b) The board shall discipline the holder of any license issued by the
14 board, whose default has been entered or whose case has been heard by the board
15 and found guilty, by any of the following methods:

16 (1) Suspending judgment.

17 (2) Placing him or her upon probation.

18 (3) Suspending his or her right to practice for a period not
19 exceeding one year.

20 (4) Revoking his or her license.

21 (5) Taking any other action in relation to disciplining him or her as
22 the board in its discretion may deem proper.

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24 7. Section 4301 of the Code states:

25 The board shall take action against any holder of a license who is guilty of
26 unprofessional conduct or whose license has been procured by fraud or
27 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
28 is not limited to, any of the following:

 (f) The commission of any act involving moral turpitude, dishonesty,
 fraud, deceit, or corruption, whether the act is committed in the course of relations
 as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

1 (h) The administering to oneself, of any controlled substance, or the use of any
2 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous
3 or injurious to oneself, to a person holding a license under this chapter, or to any other
4 person or to the public, or to the extent that the use impairs the ability of the person to
5 conduct with safety to the public the practice authorized by the license.

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7 (j) The violation of any of the statutes of this state, or any other state, or of
8 the United States regulating controlled substances and dangerous drugs.

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10 (o) Violating or attempting to violate, directly or indirectly, or assisting in
11 or abetting the violation of or conspiring to violate any provision or term of this
12 chapter or of the applicable federal and state laws and regulations governing
13 pharmacy, including regulations established by the board or by any other state or
14 federal regulatory agency.

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16 8. Section 4327 of the Code states:

17 Any person who, while on duty, sells, dispenses or compounds any drug while
18 under the influence of any dangerous drug or alcoholic beverages shall be guilty
19 of a misdemeanor.

20 9. Section 4021 of the Code defines "controlled substance" as any substance listed
21 in Chapter 2 (commencing with Section 11053) of Division 10 of the Health & Safety Code.

22 10. Section 4022 of the Code states:

23 "Dangerous drug" or "dangerous device" means any drug or device unsafe
24 for self-use in humans or animals, and includes the following:

25 (a) Any drug that bears the legend: "Caution: federal law prohibits
26 dispensing without prescription," "Rx only," or words of similar import.

27 (b) Any device that bears the statement: "Caution: federal law
28 restricts this device to sale by or on the order of a _____," "Rx only," or
words of similar import, the blank to be filled in with the designation of the
practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be
lawfully dispensed only on prescription or furnished pursuant to Section 4006.

11. Section 4059 of the Code states, in pertinent part, that a person may not furnish
any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,

1 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

2 12. Section 4060 of the Code states:

3 No person shall possess any controlled substance, except that furnished to
4 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
5 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
6 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
7 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
8 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
9 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
10 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
11 This section shall not apply to the possession of any controlled substance by a
12 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
13 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
14 practitioner, or physician assistant, when in stock in containers correctly labeled
15 with the name and address of the supplier or producer.

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17 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request
18 the administrative law judge to direct a licensee found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case, including charges imposed by the Attorney General. Under section
21 125.3 (c), a certified copy of the actual costs or a good faith estimate of costs where actual costs
22 are not available, including investigative and enforcement costs and charges of the Attorney
23 General up to the date of the hearing, signed by the designated representative of the entity
24 bringing the proceeding shall be *prima facie* evidence of the reasonable costs of investigation
25 and prosecution of the case.

26 14. This Accusation also refers to the following sections of the Health & Safety
27 Code:

28 15. Health & Safety Code § 11056 states in pertinent part:

(a) The controlled substances listed in this section are included in
Schedule III.

(b) Stimulants. Unless specifically excepted or unless listed in another
schedule, any material, compound, mixture, or preparation which contains any
quantity of the following substances having a stimulant effect on the central
nervous system, including its salts, isomers (whether optical, position, or
geometric), and salts of those isomers whenever the existence of those salts,
isomers, and salts of isomers is possible within the specific chemical designation:

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts. Additionally, oral liquid preparations of dihydrocodeinone containing the above specified amounts may not contain as its nonnarcotic ingredients two or more antihistamines in combination with each other.

16. Health & Safety Code § 11057 states in pertinent part:

(c) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

17. Health & Safety Code § 11058 states in pertinent part:

(c) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

18. Health & Safety Code § 11170 states that "[n]o person shall prescribe, administer, or furnish a controlled substance for himself."

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2 19. Health & Safety Code § 11173 states, in pertinent part, that no person shall obtain
3 a controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

4 **DRUGS**

5 20. Vicodin, a brand name for hydrocodone 5 mg with acetaminophen 500 mg, is a
6 Schedule III controlled substance as designated by Health and Safety Code section 11056,
7 subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code section
8 4022.

9 21. Vicodin ES, a brand name for hydrocodone 7.5 mg with acetaminophen 750 mg,
10 is a Schedule III controlled substance as designated by Health and Safety Code section 11056,
11 subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code section
12 4022.

13 22. Norco, a brand name for hydrocodone 10 mg with acetaminophen 325 mg, is a
14 Schedule III controlled substance as designated by Health and Safety Code section 11056,
15 subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code section
16 4022.

17 23. Ionamin, a brand name for phentermine, is a schedule IV controlled substance as
18 designated by Health and Safety Code section 11057, subdivision (f)(4), and is a dangerous drug
19 pursuant to Business and Professions Code section 4022.

20 24. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance as
21 designated by Health & Safety Code section 11057, subdivision (d)(1), and is a dangerous drug
22 pursuant to Business and Professions Code section 4022.

23 25. Viagra, a brand name for sildenafil, is a dangerous drug pursuant to Business and
24 Professions Code section 4022.

25 26. Reglan, a brand name for metoclopramide, is a dangerous drug pursuant to
26 Business and Professions Code section 4022.

27 27. Motrin, a brand name for ibuprofen, is a dangerous drug pursuant to Business
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1 and Professions Code section 4022.

2 28. Ducolax, a brand name for bisacodyl, is an over-the-counter medication and is not
3 a dangerous drug pursuant to Business and Professions Code section 4022.

4 29. Valium, a brand name for diazepam, is a Schedule IV controlled substance as
5 designated by Health& Safety Code section 11057, subdivision (d)(9), and is a dangerous drug
6 pursuant to Business and Professions Code section 4022.

7 30. Soma, a brand name for carisoprodol, is a dangerous drug pursuant to Business
8 and Professions Code section 4022.

9 31. Naprosyn, a brand name for Naproxen, is an over-the-counter medication and is
10 not a dangerous drug pursuant to Business and Professions Code section 4022.

11 **FACTS**

12 32. Respondent Karen Ibarra was employed as a pharmacy technician at Longs Drug
13 Store #247 from approximately May 18, 2005 through May 6, 2006.

14 33. In April 2006, an incoming pharmacist-in-charge ("PIC") began to do cycle
15 counts and manage drug stock levels. He became concerned upon noticing discrepancies in
16 quantities of various hydrocodone-containing drugs, including a 694 tablet shortage on
17 Hydrocodone 10/325 (generic Norco). The PIC suspected Respondent Ibarra because she
18 ordered six (6) five-hundred count bottles of Hydrocodone 10/325 (generic Norco) on April 28,
19 2006. The PIC believed it to be highly unusual for such a large quantity of that drug to be
20 ordered at one time. Further, Respondent Ibarra typically worked only one evening shift per
21 week, and one weekend per month. The PIC notified the Pharmacy Area Supervisor ("PAS")
22 and the Loss Prevention Manager ("LPM").

23 34. The LPM began an immediate investigation and installed surveillance cameras
24 throughout the pharmacy.

25 35. The first date Respondent Ibarra was scheduled to work after ordering the six (6)
26 five-hundred count bottles of Hydrocodone 10/325 (generic Norco) was May 3, 2006. A
27 decision was made to bag check Respondent Ibarra when she left the store at the end of her shift;
28 however, Respondent failed to show up for work. Unbeknownst to the PIC, Respondent Ibarra

1 arrived late for work and it was determined the following morning that two (2) five-hundred
2 count bottles of Hydrocodone 10/325 (generic Norco) were unaccounted for. A review of the
3 surveillance camera footage showed Respondent Ibarra removing drugs and other store
4 merchandise from the pharmacy.

5 36. Respondent Ibarra was scheduled to work on May 4, 2006, and a decision was
6 made to bag check her as she left the store in the event she misappropriated additional pharmacy
7 drugs. The bag check found Respondent Ibarra to be in possession of a prescription for A.
8 Nogales without proof of purchase of the co-pay. Respondent Ibarra consented to having her
9 purse inspected. Inside were two DVD movies wrapped in cellophane with price stickers
10 attached. Respondent Ibarra's purse also contained a prescription bottle for metoclopramide 10
11 mg, #30. The bottle contained five different medications, including metoclopramide,
12 phentermine 37.5 mg, ibuprofen 600 mg, bisacodyl 5 mg, and hydrocodone with tylenol
13 10/325. Respondent Ibarra claimed she had brought the DVD movies from home, that she had
14 paid for Nogales' prescription, and that she had valid prescriptions for all of the drugs in her
15 purse. She claimed she had obtained the phentermine in Tijuana, Mexico.

16 37. Upon further questioning, Respondent Ibarra admitted in writing to taking drugs
17 and merchandise from the store and pharmacy totaling \$19,035.18. Respondent Ibarra admitted
18 to stealing her own prescriptions, DVD movies, hair spray, fingernail accessories, and pharmacy
19 drugs (including full stock bottles). Respondent explained how she had secreted the drugs and
20 merchandise in the store, and ultimately hidden them in her purse for theft from the premises.
21 She admitted deactivating the Sensormatic EAS tags embedded in the DVD movies to prevent
22 the items from alarming the system when she took them out the door at the end of her shift.
23 Respondent Ibarra claimed she usually stole her prescriptions for Vicodin, Soma, Naproxin, and
24 Motrin. She further claimed she took full stock bottles of Hydrocodone 10/325, Vicodin ES
25 7.5/750, Alprazolam, Viagra, Hydrocodone 5/500, and Phentermine 37.5 mg. She also admitted
26 stealing Diazepam 10 mg in smaller quantities of 30-60 pills at a time.

27 38. Respondent Ibarra initially claimed she sold the Hydrocodone and Viagra; then
28 changed her statement and claimed that she had taken the drugs herself due to her drug

addiction, and was taking 15-20 tablets per day while working at Longs Drug Store as a Pharmacy Technician. Respondent Ibarra also claimed that she had shipped drugs to a cousin in Mexico, and shipped Viagra to an uncle.

39. Respondent Ibarra's written admissions were to the following losses:

a. Hydrocodone 10/325: two (2) bottles, twice per month for six (6) months; totaling twenty-four (24) bottles for a loss of \$9,096.00

b. Vicodin ES: three (3) bottles per month for five (5) months; totaling fifteen (15) bottles for a loss of \$3,870.00

c. Alprazolam 2 mg: two (2) bottles per month for five (5) months; totaling ten (10) bottles for a loss of \$2,490.00

d. Viagra 100 mg: two (2) bottles on two (2) occasions; totaling four bottles for a loss of \$1,435.80

e. Diazepam 10 mg: 30-60 tablets per occurrence, estimated 300 tablets for a loss of \$184.75

f. Vicodin 5/500: one (1) bottle on four (4) occasions, totaling four bottles for a loss of \$929.76

g. Phentermine 37.5 mg: four (4) bottles for a loss of \$586.40

h. Personal prescriptions: eleven (11) for a total loss of \$82.50

i. Misc. store merchandise: total loss of \$359.97

TOTAL LOSS: \$19,035.18

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit & Corruption)

40. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Business & Professions Code, and Health & Safety Code § 11173, in that on or between May 18, 2005 and May 7, 2006, while working as a pharmacy technician, Respondent admitted in writing that she illegally obtained controlled substances from her employer, Longs Drug Store, using fraud, deceit, and dishonesty, as detailed in paragraphs 32-39, above.

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2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Unprofessional Conduct - Commission of Acts Involving Moral Turpitude,
4 Dishonesty, Fraud, Deceit & Corruption)**

5 41. Respondent is subject to disciplinary action under section 4301, subdivision (f) of
6 the Business & Professions Code in that on or between May 18, 2005 and May 7, 2006, while
7 working as a pharmacy technician, Respondent admitted in writing that she wrongfully
8 misappropriated unpaid prescriptions and store merchandise from her employer, Longs Drug
9 Store, using fraud, deceit, and dishonesty, as detailed in paragraphs 32-39, above.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct - Commission of Acts Involving Moral Turpitude,
12 Dishonesty, Fraud, Deceit & Corruption and Self-Administration of Controlled Substance)**

13 42. Respondent is subject to disciplinary action under section 4301, subdivision (h) of
14 the Code, in conjunction with Health & Safety code section 11170, in that on or between May
15 18, 2005 and May 7, 2006, while working as a pharmacy technician, Respondent illegally
16 administered a controlled substance to herself, as detailed in paragraphs 32-39, above. Such
17 conduct is a misdemeanor under section 4327 of the Code.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct -Self-Administration of Controlled Substance/Impairment)**

20 43. Respondent is subject to disciplinary action under section 4301, subdivision (j), in
21 conjunction with section 4327 of the Code, and Health & Safety Code section 11170 in that on
22 or between May 18, 2005 and May 7, 2006, while working as a pharmacy technician,
23 Respondent used a controlled substance to the extent or in a manner as to impair her ability to
24 practice under her license, as detailed in paragraphs 32-39, above. Such conduct is a
25 misdemeanor under section 4327 of the Code.

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2 **FIFTH CAUSE FOR DISCIPLINE**

3 **(Unprofessional Conduct -Theft and Possession of a Controlled Substance Without a Prescription)**

4 44. Respondent is subject to disciplinary action under section 4301(j) in conjunction
5 with sections 4059 and 4060, and Health & Safety code section 11170, for theft and possession
6 of a controlled substance without a legitimate prescription, as detailed in paragraphs 32-39,
7 above.

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct - Violating Federal & State Laws
10 & Regulations Governing Pharmacy)**

11 45. Respondent is subject to disciplinary action under section 4301,
12 subdivision (o) of the Code in that on or between May 18, 2005 and May 7, 2006, while
13 working as a pharmacy technician, Respondent violated federal and state laws and regulations
14 governing pharmacy, including regulations established by the Board, as detailed in paragraphs
15 32-39, above.

16 **SEVENTH CAUSE FOR DISCIPLINE**

17 **(Furnishing Dangerous Drugs)**

18 46. Respondent is subject to disciplinary action under sections 4301,
19 subdivision (j) and 4059 of the Code in that on or between May 18, 2005 and May 7, 2006,
20 while working as a pharmacy technician, Respondent furnished to herself and others controlled
21 substances without a valid prescription, as detailed in paragraphs 32-39, above.

22 **EIGHTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct- Violation of California Statutes Regulating Controlled
24 Substances and Dangerous Drugs)**

25 47. Respondent is subject to disciplinary action under section 4301, subdivision (j) of
26 the Code in that on or between May 18, 2005 and May 7, 2006, while working as a pharmacy
27 technician, Respondent knowingly violated California statutes regulating controlled substances
28 and dangerous drugs, as detailed in paragraphs 32-39, above.

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PRAYER

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WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

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1. Revoking or suspending Pharmacy Technician Registration Number TCH 34516, issued to Karen G. Ibarra;

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2. Ordering Karen G. Ibarra to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

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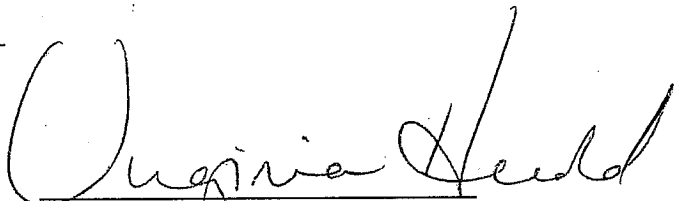
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DATED: 9/24/08



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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